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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF: J.P.II and A.P.,	)	
AMY P., Appellant/Respondent,	)	
vs.	)	No. 55A01-0710-JV-456
MORGAN COUNTY DEPARTMENT OF CHILD SERVICES Appellee/Petitioner.	)	

APPEAL FROM THE MORGAN SUPERIOR COURT
The Honorable Christopher L. Burnham, Judge
Cause Nos. 55D02-0705-JT-133
55 D02-0705-JT-131

March 24, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Respondent Amy P. ("Mother") appeals the involuntary termination, in Morgan Superior Court, of her parental rights to her children, J.P. II and A.P. On appeal, Mother claims that there was insufficient evidence supporting the trial court's judgment terminating her parental rights. Concluding that there was clear and convincing evidence supporting the trial court's judgment, we affirm.

FACTS AND PROCEDURAL HISTORY[1]

On April 21, 2005, the Morgan County Department of Child Services ("MCDCS") received a report that Mother and her husband, Joseph P. ("Father"), had been arrested as a result of a violent confrontation with neighbors over a bicycle and that A.P., born on September 14, 2004, had been placed with an inappropriate caregiver. Mother had been arrested and charged with battery with a deadly weapon, residential entry and theft. Father was arrested and charged with battery resulting in injury. Both Mother and Father were receiving treatment services from MCDCS at the time of their because of a CHINS determination as to two of Father's other children who were living with Mother and Father. At the time of the confrontation, Mother was pregnant with J.A.P. II.

MCDCS Case Manager Michelle Faudree ("Faudree") investigated the complaint, determined that A.P. was in the care of a person from whom the court had previously removed a sibling, and subsequently obtained permission from the court to place A.P. in protective care.

[1] Because Father is not a party to this appeal, and because Mother only appeals the termination of her parental rights to her biological children, A.P. and J.P. II, we limit our discussion herein to the pertinent facts pertaining to Mother and these two children.

On April 25, 2005, Mother, who was still incarcerated, appeared for the CHINS detention and initial hearing and was appointed counsel. On April 28, 2005, MCDCS filed an amended CHINS petitions as to A.P. alleging that her "physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of her parent[s] . . . to supply [A.P.] with necessary food, clothing, shelter, medical care, education or supervision." Exhibit 1.

On May 3, 2005, Mother, who was still incarcerated, entered a general admission of the truth of the allegations in the CHINS petition as to A.P. On July 13, 2005, the trial court entered a dispositional decree ordering Mother to attend, cooperate, and participate in various services through an agreed provider and to follow all reasonable recommendations of the provider for treatment and services until successfully completed, in order to achieve reunification with A.P. These court-ordered services and responsibilities required Mother to, among other things, submit to random drug and alcohol screens, participate in anger management counseling, substance abuse counseling, family counseling, parenting and home-based counseling, to obtain and maintain suitable housing and employment, to notify the case worker of any change in address, and to exercise reasonable supervised visitation with A.P.

J.P. II, born August 30, 2005, resided with Mother and Father until he was removed from his parents' care, pursuant to emergency custody order, on February 1, 2006. On that day, MCDCS had received a report from Mother's probation officer wherein the probation officer stated that when the parents reported to the probation office

for random drug testing, they both admitted that they had smoked methamphetamine at their home, in the presence of J.P. II, on January 30, 2006.

On February 2, 2006, Mother appeared in court for a CHINS detention and initial hearing on the CHINS petition filed as to J.P. II. Mother was appointed counsel and the hearing was continued until February 8, 2006, when Mother appeared with her attorney and admitted to the allegations contained in the CHINS petition. On April 24, 2006, the trial court conducted a dispositional hearing wherein J.P. II was ordered to remain a ward of MCDCS. Mother was also ordered to participate in substantially the same services as had been ordered in the court's dispositional decree pertaining to A.P.

On August 8, 2006, MCDCS filed a petition to terminate Mother's parental rights as to A.P., who had been in foster care continuously since April 21, 2005. On October 26, 2006, MCDCS filed a petition, under a separate cause number, to terminate Mother's parental rights as to J.P. II, who had resided continuously in foster care since April 26, 2006. On October 18, 2006, the trial court conducted an initial hearing on the termination petitions. Both parents failed to appear despite proper notification of the hearing. The trial court issued an order of involuntary termination on October 20, 2006.

On December 22, 2006, counsel for Father filed a motion to set aside the default judgment. During a hearing held on December 28, 2006, the trial court granted Father's motion and set aside the default judgments as to both parents. Both cases were reassigned from the Morgan Circuit Court to the Morgan Superior Court II on May 9, 2007. On July 24 and 25, 2007, a fact-finding hearing on the termination petitions was held. Mother appeared on the first day of trial, but not on the second day.

On September 4, 2007, the trial court entered its judgment terminating both Mother's and Father's parental rights to A.P. and J.P. II. On October 23, 2007, Mother filed a request to consolidate the cases for purposes of appeal. Mother's request for consolidation was granted on November 13, 2007. This appeal ensued.

DISCUSSION AND DECISION

Mother asserts that the trial court's judgment is not supported by clear and convincing evidence. Specifically, Mother claims that she "successfully completed every program afforded to her[,]" that in over a year of supervision she "only failed one drug test[,]" that she was gainfully employed, and that she showed a loving relationship with her children. Appellant's Brief p. 6. Thus, Mother concludes, insufficient evidence was presented to justify termination of her parental rights.

Initially, we acknowledge that this court has long had a highly deferential standard of review in cases concerning the termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). Thus, when reviewing the trial court's judgment, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. *Id.*

Here, the trial court made specific findings in ordering the termination of Mother's parental rights. Where the trial court enters specific findings of fact, we apply a two-tiered standard of review. First, we must determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Bester v. Lake County Office of Family and Children*, 839 N.E.2d 143, 147 (Ind. 2005). In

deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied; see also Bester*, 839 N.E.2d at 147. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. *D.D.*, 804 N.E.2d at 264. A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions do not support the judgment thereon. *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996).

"The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, the trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *K.S.*, 750 N.E.2d at 837. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.* at 836.

In order to terminate a parent-child relationship, the State is required to allege and prove that:

> (A) [o]ne (1) of the following exists:
>
> > (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
> >
> > * * *
> >
> > (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two months;

(B) there is a reasonable probability that:

(i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and,

(D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2) (2006). The State must establish each of these allegations by clear and convincing evidence. *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992).

I. Whether Conditions Will be Remedied

Mother does not challenge the fact that both children were removed from her care for the requisite amount of time pursuant to the statute. Mother does, however, challenge the evidence supporting the remaining factors set forth above. In so doing, Mother first asserts that MCDCS failed to prove by clear and convincing evidence that the conditions that resulted in the removal and continued placement of the children outside of her care will not be remedied. She also asserts that because the MCDCS failed to allege that continuation of the parent-child relationship poses a threat to the children's well-being, the trial court's judgment should be remanded to "determine if the sole justification of 'failure to remedy the conditions which gave rise to detention' would be sufficient under the daunting burden of proof required for termination." Appellant's Brief pp. 7-8.

Initially, we note that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, it requires the trial court to find *only one* of the two requirements of subsection (B) by clear and convincing evidence. *See L.S.*, 717 N.E.2d at 209. Accordingly, we shall first determine whether clear and convincing evidence supports the trial court's finding that a reasonable probability exists that the conditions that resulted in the children's removal and continued placement outside the home of the parents will not be remedied.

When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. However, the court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.* Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. The trial court may also properly consider the services offered to the parent by the department of child services, and the parent's response to those services, as evidence of whether conditions will be remedied. *Id.* Moreover, MCDCS is not required to rule out all possibilities of change;

rather, it need establish only that there is a reasonable probability that Mother's behavior will not change. *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In determining that there was a reasonable probability that the conditions resulting in the children's removal and continued placement outside of Mother's home would not be remedied, the trial court made the following pertinent findings:

FINDINGS

* * *

> [Mother] attended substance abuse counseling in June 2005 and completed the program in January 2006.
>
> On February 1, 2006, DCS received a report from [Mother's] . . . probation officer . . . that when [Mother] . . . reported to the probation officer for random drug testing, [Mother] and [Father] both admitted . . . that they smoked methamphetamine at their home in Martinsville on January 30, 2006. [J.P. II] was living in the home with [Mother] and [Father] at the time.
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> * * *
>
> On March 8, 2007, [Father] was arrested as a result of a violent domestic battery committed by him against [Mother]. At that time, [Father] and [Mother] were living in a home on West Dixon Street in Martinsville. [Mother] and [Father] were both tested for drugs. [Mother] tested positive for hydrocodone. [Father] tested positive for methamphetamine. [Mother] was again tested on April 2, 2007, and tested positive for cocaine. [Mother] was in treatment for addiction through the Center for Behavioral Health at that time. [Mother] also wrote a letter to the court in which [Father's] domestic battery charge was pending, and admitted drinking wine.
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> * * *
>
> [Mother] moved in, briefly, with her parents in Martinsville after the domestic violence incident. [Mother] recently reported to the case manager that she has moved to Indianapolis, but provided no verifiable address, either to the case manager or this Court. [Mother] had a job working at The Waters nursing home in Martinsville until September 2007, when she was fired. [Mother] recently reported to the case manager, Diane Padich, that

> she is now working as a waitress at the "Classy Chassy" establishment in Indianapolis, but has not verified this employment, or her income, in any way. [Mother] has been unable to obtain *and maintain* steady employment, suitable housing or a stable environment in which to raise children.
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> * * *
>
> Dr. Mark Hickman, licensed psychologist with the Center for Behavior Health ("CBH"), conducted the psychological testing of both [Father] and [Mother].
>
> * * *
>
> Dr. Hickman's most significant finding as to [Mother] was that [Mother] suffers from a thought disorder, consistent with bi-polar. In addition, [Mother] has a strong indication of substance abuse and methamphetamine dependence. She has a strong indication of a personality disorder, passive aggressive. She has a pattern of self-defeating behaviors. Her ability to cope with depression and anger is poor. Her continued substance abuse behavior is a serious concern because of its impact on her emotions. Dr. Hickman recommended that [Mother] continue in psychiatric treatment for depression and anger; but noted that [Mother's] compliance with recommendations has been "sporadic." [Mother's] behavior throughout the CHINS proceeding and the termination proceeding has been very consistent with Dr. Hickman's evaluation and prognosis.

Appellant's Brief, judgment, pp. 2-4 (emphasis in original).[2]

The evidence most favorable to the judgment supports the trial court's findings set forth above. Testimony from various caseworkers reveals that Mother was unable to maintain consistent employment, going months without a job, and was fired from her latest job at a nursing home in Martinsville, Indiana, several months before the termination hearing. Although Mother claimed to have obtained new employment by the

[2] For clarification purposes, we note that, pursuant to Ind. Appellate Rule 46(A)(10), Mother properly attached to her Appellant's Brief a copy of the trial court's judgment terminating her parental rights. However, the pages of the trial court's judgment were not re-numbered in accordance with the pages of the brief. Thus, the pages numbers cited herein by this Court refer not to the pages of Mother's Appellant's Brief, but to the pages of the trial court's judgment itself.

time of the termination hearing, Mother failed to provide MCDCS with any verification of this new job.

Likewise, at the time of the termination hearing, Mother's residence, if any, was unknown to MCDCS. The record reveals that in May 2006, Mother moved out of the residence she had shared with Father in Martinsville, Indiana. She then moved in with her parents for a brief time. The day before the termination hearing, she informed MCDCS Case Manager Diane Padich ("Padich") that she was living and working in Indianapolis. However, Mother failed to provide Padich with any verification of her new residency.

The record also reveals that although Mother did complete substance abuse counseling in January 2006, after what Padich describes as a "rocky start[,]" *see* transcript p. 60, that same month, Mother tested positive for methamphetamine, and admitted to consuming the drug while at home and in the presence of J.P. II. Mother tested positive for cocaine again in April 2007.

When questioned as to her opinion regarding Mother's overall compliance with MCDCS recommendations and court orders, Padich responded, "[Mother's] compliance has . . . not been good in that she continues . . . to have substances . . . in her drug screens as recently as April of 2007." *Tr.* p. 83. Padich went on to say, "Just based on . . . the pattern of behaviors over the time that I've known her, I don't see that the drug use is going to cease." *Tr.* pp. 83-84.

Dr. Mark Hickman, licensed psychologist and case manager with the Center for Behavior Health ("CBH"), testified that he conducted Mother's psychological testing and

diagnosed Mother with bipolar disorder, methamphetamine dependence, and personality disorder, either passive-aggressive or paranoid type. As a result of his diagnosis, Dr. Hickman recommended medication for the treatment of Mother's depression and continuing individual therapy to work on her anger management issues, relationship issues, and drug addiction.

Despite these recommendations, the evidence shows that Mother had "a high rate of absenteeism" from therapy treatment, and Dr. Hickman testified that Mother's recent participation in therapy had been "at a lower rate lately. . . ." *Tr.* p. 195. Dr. Hickman went on to say that Mother's lack of participation in treatment concerned him because "this was a period of time when it was very . . . very much clarified that maintaining a drug-free status and keeping treatment appointments was an appropriate and important way of showing readiness to have the family reunited." *Id.* at 196.

A.P. and J.P. II were removed from Mother's care because the children's physical and mental condition was seriously impaired or endangered due to the substance and physical abuse occurring in the home, as well as the lack of appropriate supervision. At the time of the termination hearing, these issues remained a concern of the MCDCS. Mother, although physically separated from Father, was still married to him. Additionally, Padich testified that Mother's mental health issues remained a concern as well, stating, "[B]oth parents have a long history of mental health issues. . . . [Mother] [has] been treated ongoing (sic) since adolescence at [the CBH]. . . and neither one of them has fully followed through with that regarding medication usage, individual therapy sessions, whatever. And it's just . . . very concerning." *Tr.* p. 123.

Based on the foregoing, we conclude that MCDCS proved by clear and convincing evidence that the conditions that resulted in the children's removal from Mother's custody will not likely be remedied. As stated previously, a trial court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration the parent's *habitual patterns of conduct* to determine the probability of future neglect or deprivation of the child. *D.D.*, 804 N.E.2d at 266. Thus, the trial court had the responsibility to judge Mother's credibility and weigh her testimony of changed conditions against the testimony demonstrating her habitual patterns of conduct in failing to remain sober and in failing to provide a consistently safe and nurturing residence and environment for her children. It is clear that the trial court gave more weight to evidence of the latter. We find no clear error in this determination.[3] *See In re L.V.N.*, 799 N.E.2d 63, 68-71 (Ind. Ct. App. 2003) (concluding that mother's arguments that the conditions had changed and that she was now drug free constituted an invitation to reweigh the evidence).

II. Best Interests of the Children

Next, Mother challenges the trial court's determination that termination of her parental rights was in the children's best interests. We are mindful that in determining what is in the best interests of a child, the court is required to look beyond the factors identified by the Department of Child Services and look to the totality of the evidence.

[3] Having determined that the trial court's conclusion regarding the remedy of conditions is supported by clear and convincing evidence, we need not address the issue of whether MCDCS failed to prove that the continuation of the parent-child relationship posed a threat to the children's well-being. *See L.S.*, 717 N.E.2d at 209 (explaining that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive).

McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the trial court must subordinate the interests of the parent to those of the children. *Id.*

We further recognize that children should not be removed from the custody of their parents just because there is a better place for them, but because the situation while in their parents' custody is "wholly inadequate" for their survival. *Bester*, 839 N.E.2d at 148. However, termination of a parent-child relationship is proper where the children's emotional and physical development is threatened. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied*. The trial court need not wait until the children are irreversibly harmed such that their physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

At the fact-finding hearing on the termination petition, Padich testified that she felt termination was in the children's best interests because Mother had not "demonstrated a great deal of stability with employment, living situation, ability to maintain [a] harmonious living situation . . . follow through with medication needs, counseling needs for mental health issues . . . . And I would question [her] ability to follow through with the needs of the children as far as their medical needs are concerned." *Tr.* p. 140.

When questioned as to whether she felt reunification with the children was possible in this case, Court Appointed Special Advocate ("CASA") Angela Dunn responded, "Not after this length of time [and] lack of progress." *Tr.* p. 165. She went on to say, "[I]t's been going on for a really long time. [J.P. II] and [A.P.] are growing up . . . in foster care, and they're just the most wonderful things, and it makes me really sad

to see the lack of attempting to take care of things that [the parents] really receive a lot of help with . . . I've heard them be told, do you understand what can happen here if there is [no] improvement? And . . . they've said that, yes, they understand, but still it's not being done." *Tr.* p. 166.

This testimony, coupled with the evidence of unchanged conditions, leaves us convinced that the trial court's finding that termination was in the children's best interests was supported by clear and convincing evidence. *See In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000) (concluding that the testimony of the CASA and family case manager that parental rights should be terminated, coupled with the evidence that conditions resulting in placement outside the home will not be remedied, is sufficient to support a finding that termination is in the child's best interests).

III. Satisfactory Plan

Finally, Mother claims that MCDCS failed to prove that it had a satisfactory plan for the care and treatment of the children following termination of her parental rights. Specifically, Mother states that MCDCS "conceded that the children had special needs, that the foster parents would not adopt the children, and that there currently was no one available to adopt such hard to place children." Appellant's Brief p. 9. Mother therefore concludes that MCDCS's plan for the children, namely, adoption, was an inappropriate plan.

As stated earlier, in order for the trial court to terminate a parent-child relationship, the trial court must find that there is a satisfactory plan for the care and treatment of the child. Ind. Code § 31-35-2-4(b)(2)(D). This plan need not be detailed,

"so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated." *Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 374 (Ind. Ct. App. 2007), *trans. denied*.

Case Manager Padich testified that MCDCS's plan for the children, following termination of parental rights, was adoption. She further testified that MCDCS central office had identified several prospective adoptive families through the "Snap Team" and that she felt there would be no issues or problems with the adoption of either child, despite their special needs. *Tr.* p. 88. This sentiment was echoed by CASA Dunn, who testified that she not only agreed with MCDCS's recommendation to terminate Mother's parental rights, but that she saw no impediment to the adoption of both children. In light of this evidence, we conclude that the plan set forth by the MCDCS for the adoption of the children is satisfactory. *See Castro v. State Office of Family & Children*, 842 N.E.2d 367, 378 (Ind. Ct. App. 2006) (stating adoption is generally a satisfactory plan for the care and treatment of children after termination of parental rights), *trans. denied*. Having determined that the trial court's judgment is supported by clear and convincing evidence, we conclude Mother's challenge to the termination of her parental rights to A.P. and J.P.II is without merit.

The judgment of the trial court is affirmed.

BAKER, C.J., and DARDEN, J., concur.